

- U.S. Pat. App. Ser. No. 10/532,414
- Attorney Docket No. 10191/3791
- Reply to Final Office Action of 09/11/2006

REMARKS

Claims 9 to 18 are now pending and being considered.

It is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

With respect to paragraph three (3) of the Office Action, claims 9 to 16 were rejected under 35 U.S.C. § 102(e) as anticipated by Oswald et al., U.S. Patent No. 6,907,335.

As regards the anticipation rejections of the claims, to reject a claim under 35 U.S.C. § 102, the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (See Scripps Clinic & Research Foundation v. Genentech, Inc., 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). As explained herein, it is respectfully submitted that the prior Office Action does not meet this standard, for example, as to all of the features of the claims. Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed subject matter. (See Akzo, N.V. v. U.S.I.T.C., 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

As further regards the anticipation rejections, to the extent that the Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Examiner must provide a “basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics *necessarily* flows from the teachings of the applied art.” (See M.P.E.P. § 2112; emphasis in original; and see Ex parte Levy, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int'l. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic.

Claim 9 specifically provides that *the remote sensor is used to perform a plausibility check for the velocity of the vehicle*, and that *a sensor arrangement determines the velocity of the vehicle*. In the context of the exemplary embodiment, a velocity is determined by a sensor arrangement 14, as provided for in claim 9 as presented. This determined velocity is then subjected to a plausibility check by another sensor – namely, the remote sensor.

In contrast, the “Oswald” reference refers to a pre-crash sensor system, in which a velocity of an obstacle is determined. The “Oswald” reference also refers to determining the relative velocity between the vehicle and the obstacle by knowing the vehicle velocity. Importantly, while a pre-crash sensor may be a remote sensor, the pre-crash sensor is unable to detect the velocity of the vehicle, which is the platform for the pre-crash sensor. Also, the

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"Oswald" reference does not identically disclose (nor even suggest) the feature of determining a plausibility check, as provided for in the context of the subject matter of claim 9.

Accordingly, the "Oswald" reference does not identically describe (or even suggest) the claim 9 feature in which *the remote sensor is used to perform a plausibility check for the velocity of the vehicle*. Claim 9 is therefore allowable, as are its dependent claims 10 to 18.

It is therefore respectfully submitted that claims 9 to 18 are allowable.

Conclusion

It is therefore respectfully submitted that all of pending and considered claims 9 to 18 are allowable. It is therefore respectfully requested that the rejections be withdrawn, since all issues raised have been addressed and obviated. An early and favorable action on the merits is therefore respectfully requested.

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